See also the case of Busby v. Indiana Board of Agriculture, 85 Ind. App. 572, at page 575, where the court said:

"The Indiana Board of Agriculture was created as an agency of the state for the purpose of managing and conducting a department of the state pursuant to Art. 8, section 1 of the Constitution, section 159 Burns 1926. It is an involuntary corporation, organized, not for the purpose of profit or gain, but solely for the public benefit, and having only such limited powers as were deemed necessary for that purpose. In performing the duties required of it, appellee exercises a public function for the public good for which it received no private or corporate benefit. Being organized solely for a public purpose, no action lies against it for an injury received by a person on account of the negligence of its officers, unless a right of action is expressly given by statute."

See also Freel v. the School City of Crawfordsville, 142 Ind. 27.

There is no statute expressly taking the State Highway Commission out of the general rule as above stated and in my opinion, therefore, there is no liability as against the commission under the facts assumed herein.

GROSS INCOME TAX: Gross income tax act—whether domestic mutual insurance companies are exempt.

October 17, 1933.

Department of Treasury,
State of Indiana,
Indianapolis, Indiana.
Attention: Hon. Leroy Sanders,
Gross Income Tax Division.

Dear Sir:

I have before me your request for an official opinion upon the question submitted by you as to whether domestic mutual insurance companies are exempt from taxes imposed under and pursuant to chapter 50 of the Acts of the General Assembly of Indiana of 1933, known as the "Gross Income Tax Act of 1933."
The question arises by reason of section 7 of the act which provides as follows:

"Sec. 7. There are, however, excepted from the provisions of this act:

(a) Insurance companies which pay the State of Indiana a tax of more than one per cent upon premiums levied under the provisions of the laws of this state.

(b) Labor, agricultural and horticultural societies and other organizations not operated for profit; cemetery associations and companies which are organized and operated exclusively for the benefit of their members; fraternal benefit societies, orders or associations, operating under the lodge system for the exclusive benefit of the members, and providing for the payment of death, sickness, accident or other benefits to the members of such societies, orders or associations, and to the dependents of such members; corporations, associations or societies organized and operated exclusively for religious, charitable, scientific, fraternal or educational purposes; business leagues, chambers of commerce, boards of trade, civic leagues and other organizations operated exclusively for the benefit of the community and for the promotion of social welfare; Provided, however, That this exception shall apply only to companies, organizations, corporations and/or societies named in this subsection which are not organized for profit, and no part of the income of which inures to the benefit of any stockholder or other private individual." (Our italics.)


I think it may be stated correctly as a general proposition, that statutes which impose a tax are usually strictly construed in favor of the taxpayer and against the government imposing the tax. The contrary is true, however, when the question under consideration relates to the power of the government, in which case such statutes are construed liberally in favor of and in support of such power.

Washington National Bank v. Daily, 166 Ind. 631, at p. 636;
Moreover, the rule of strict construction above referred to is only a rule of construction and is not to be applied to defeat the intention of the legislature. As said by the court in the case of Armstrong, Admr., v. State, ex rel., 72 Ind. App. 303, at page 314:

"They" (taxation statutes) "should be fairly and reasonably construed so as to effectuate the intention of the legislature in enacting such laws."

I also desire to direct your attention to the fact that while chapter 50, supra, is a taxation statute, section 7 now under consideration and relied upon as exempting domestic mutual insurance companies from the tax is an exemption provision. The rule is quite well settled as to the interpretation of statutes providing for tax exemption. I quote from Corpus Juris, Volume 59, page 1135.

"In pursuance of the beneficent public policy which favors equality in the distribution of the burdens of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and can not be raised by implication."

See, United Brethren Publishing Establishment v. Shaffer, etc., 74 Ind. App. 178, at p. 182.

It is not claimed that section 7, supra, exempts by name domestic mutual insurance companies, but it has been contended that the italicized language "other organizations not operated for profit," is sufficient to include such companies in the exemption provisions, it being claimed that such companies are not operated for profit.

In view of the conclusion which I have reached by the application of pertinent rules of construction, I do not think, it is necessary to enter upon a discussion of the question, whether such companies may be considered as non-profit organizations. It will be noted that the italicized language, supra, follows a specific enumeration of a rather well defined type of organizations. The language is,—"Labor, agricultural and horticultural societies and other organizations not operated for profit." The rule of statutory construction applicable has been used many times by the Supreme and Appellate Court
of Indiana. I quote from the case of Yarlott v. Brown, 192 Ind. 648, at page 653. The court said:

"A familiar rule of statutory construction is that, where words of specific and limited signification in a statute are followed by general words of more comprehensive import, the general words shall be construed to embrace only such things as are of like kind or class with those designated by the specific words, unless a contrary intention is clearly expressed in the statute."

Note also the language of the court in the case of Bartles v. City of Garrett, 89 Ind. App. 349, at page 351, where the court said:

"It is a principle of statutory construction everywhere recognized and acted upon not only with respect to penal statutes, but to those affecting only civil rights and duties, that, where words particularly designating specific acts or things are followed by and associated with words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated under the doctrine of ejusdem generis." (Our italics.)

Domestic mutual insurance companies are clearly not of like kind with "labor, agricultural and horticultural societies," and under the above rule would not be included in the more comprehensive general language which immediately follows the language above quoted. Especially is this true in consideration of the rule requiring a strict construction against the exemption.

But there are other reasons for this conclusion. It will be noted that the legislature had before it in paragraph (a) of section 7, supra, the subject of insurance companies which were to be exempted. It seems plausible that if the legislature had intended to exempt insurance companies other than those expressly exempted in paragraph (a), that is, those which pay the State of Indiana a tax of "more than one percent upon premiums levied under the provisions of the laws of this state," if the legislature had intended to exempt other insurance companies, paragraph (a) would have been the appropriate place to provide for the exemption.
Moreover, in section 1, paragraph (h) of said act in defining "gross income," the following language is used:

"(h) In case of domestic insurance carriers, gross income shall not include income which becomes a reserve or other policy liability in accordance with the laws of this state or the rulings of the duly authorized supervisory officials and shall not include such premium income as is derived from business conducted outside this state on which such domestic insurance carrier pays a premium tax of one per cent or more."


Note the language, "domestic insurance carriers." This is surely broad enough to include mutual as well as stock companies. I can see no reason for holding that the above expression means only stock companies when it so clearly is not thus limited. In my opinion, it means both stock and mutual companies, and evidences a clear intent of the legislature to include both within the meaning of the act. If mutual insurance carriers were to be exempted, I can see no reason for defining their gross income and making it the subject of special treatment.

For the reasons herein given, in my opinion, domestic mutual insurance companies are not exempted from the tax imposed by chapter 50 of the Acts of 1933. It is my further opinion that in arriving at their taxable "gross income," the provisions of section 1, paragraph (h) are applicable.

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AUDITOR OF STATE: Whether oil blended with gasoline and sold as such is taxable per gallon, the same as gasoline.

October 17, 1933.

Honorable Floyd E. Williamson,
Auditor of State,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 9, 1933, in which the following question is asked:

Where oil is blended with gasoline, and sold as such, is it taxable, per gallon, the same as gasoline?